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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 548

BROTHERHOOD OF RAILROAD TRAINMEN, PETITIONER

v.

THE BALTIMORE & OHIO RAILROAD COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION, INTERVENING PLAINTIFF, IN OPPOSITION

OPINIONS BELOW

The district court rendered no opinion. The opinion of the Court of Appeals for the Seventh Circuit (R. 285-293) is reported in 170 F. 2d 654.

JURISDICTION

The judgment of the Court of Appeals was entered on November 11, 1948 (R. 294). The juris-

diction of this Court is invoked under 28 U.S.C., 1254.

QUESTIONS PRESENTED

1. Whether the Norris-LaGuardia Act deprives the federal courts of their jurisdiction, conferred by the Interstate Commerce Act, to enforce an order of the Interstate Commerce Commission prescribing the operating relationships between the plaintiff trunk line rail carriers and the defendant switching carrier when employees of the switching carrier object to such enforcement.

2. Whether, in such an action, the employees of the defendant switching carrier are indispensable parties.

3. Whether denial of a motion to vacate a preliminary injunction must be supported by findings of fact and conclusions of law.

4. Whether the trial judge abused his discretion in fixing the terms for an injunction bond.

5. Whether issuance of the preliminary injunction in this case was precluded by Section 5(2)(f) of the Interstate Commerce Act, the terms of the Commission's order, or the public interest.

STATUTE AND RULE INVOLVED

Section 16(12) of the Interstate Commerce Act and Rule 52(a) of the Federal Rules of Civil Procedure are set forth in the Appendix, *infra*, pp. 12-13.

STATEMENT

This case came before this Court during its 1946 Term. *Railroad Trainmen* v. *B. & O. R. Co.*, 331 U.S. 519. The situation giving rise to the problem there presented as well as the issues involved at this stage of the litigation is described in some detail in this Court's opinion in that case. For present purposes it is sufficient to summarize the facts there stated before setting out the proceedings which followed upon this Court's judgment in that case.

In 1922, the Interstate Commerce Commission approved transactions whereby the New York Central Railroad Co. (Central) secured ownership and control of trackage and switching facilities at the Union Stock Yards in Chicago, the facilities of the Chicago River & Indiana Railroad Co. (River Road) being those with which we are here concerned.

A condition on the Commission's approval was that "The present traffic and operating relationships existing between the Junction [another switching carrier] and River Road and all carriers operating in Chicago shall be continued, in so far as such matters are within the control of the Central."

Before and after the Commission's order, the trunk line railroads used their own power and crews in moving their livestock cars over the trackage operated by River Road but, on and after February 1, 1946, River Road power and crews were used. This change resulted from a settlement

between the River Road and the Brotherhood of Railroad Trainmen, petitioner in this case, which represented the River Road's trainmen and which had threatened a strike unless the work in question was given to the River Road trainmen.[1]

The trunk line railroads then brought suit for a preliminary and permanent injunction under Section 16(12) of the Interstate Commerce Act, claiming that the new practice was in violation of the condition of the Commission's order quoted above. They sought to enjoin the defendant switching railroads and "their respective officers, agents, representatives, servants, employees and successors" from disobeying the Commission order.

The Commission intervened as a party plaintiff and the district court issued a preliminary injunction as requested. Three days after the preliminary injunction became effective, the Brotherhood, petitioner here, asked leave to file its special appearance in order that it might move to vacate the injunction and dismiss the proceedings for failure to join the Brotherhood and its members as indispensable parties.

Upon denial of this motion, River Road filed its answer, and the Brotherhood moved to intervene as a party defendant, on the ground that it and its members were indispensable parties. The district court having denied the motion to intervene, a direct appeal was taken to this Court which resulted

[1] Under the agreement, the River Road men did the work on the outbound movements; inbound movements were to continue to be handled by foreign line crews (R. 85, 145).

in a reversal on the ground that the Brotherhood had an absolute right to intervene.

On remand, after the decision of this Court, the Brotherhood was permitted to intervene (R. 138), and it then filed a motion to vacate the preliminary injunction on the grounds that the injunction was issued when none of the River Road's employees were parties, that the employees were indispensable parties, and that the Norris-LaGuardia Act precluded injunctive relief in the circumstances of the case (R. 139-141). The Brotherhood also sought an award of damages arising out of the allegedly improvident issuance of the injunction, and summary judgment on the grounds that the court had no jurisdiction because the River Road's engineers, firemen, and enginemen, being indispensable parties, had not been joined, and, in the alternative, that the plaintiffs had failed to state a claim upon which relief could be granted (R. 141-142).

The Brotherhood, three days later, then filed a motion for an order requiring the plaintiffs to give additional security, in which it asked that the previously filed bond for $10,000 be increased to $100,000, and pointed out its doubts as to whether the previous bond inured to the benefit of all employees of the River Road (R. 158-160).

After the trial judge had stated his views with respect to these motions of the Brotherhood (R. 230-233), and after an order was entered continuing the cause "for the entry of supplemental find-

ings of fact and conclusions of law" (R. 260), an order was drawn by the parties and signed by the judge (R. 259-261). The order denied the Brotherhood's motion to vacate the preliminary injunction, to assess damages and for summary judgment, and directed the plaintiffs to file a bond in the amount of $25,000 "conditioned on the payment of such costs and damages as may be incurred or suffered on and after the 13th day of October, 1947, by the trainmen employed by the [River Road], who may be found to have been wrongfully enjoined or restrained by said preliminary injunction" (R. 260-261).

The Court of Appeals for the Seventh Circuit affirmed this order of the district court (R. 285-294).

ARGUMENT

The petitioner's application for a writ of certiorari constitutes an attempt by it to secure review by this Court of an interlocutory order. This fact has a twofold significance. In the first place, it is settled that "except in extraordinary cases, the writ is not issued until final decree." *Hamilton Shoe Co.* v. *Wolf Brothers,* 240 U. S. 251, 258, and cases cited. Unlike the situation presented when this case was last brought to this Court (*Railroad Trainmen* v. *B. & O. R. Co.,* 331 U. S. 519), there are not now present any questions the correct disposition of which is both basic to the further conduct of this case and of such extraordinary importance as to justify the piecemeal review now

sought. In the second place, the interlocutory nature of the order of the district court led the court of appeals, in the proper exercise of its discretion, to refuse to pass on the substantive questions briefly described in the fifth question presented. *Supra*, p. 2. It follows *a fortiori* that this Court should not decide questions which were properly left undecided below. Cf. *United States* v. *Ballard*, 322 U. S. 78, 88. And, that being so, this brief will be confined to a discussion of those issues which were decided by the Court of Appeals.[2]

1. Even if this case more clearly and directly involved a "labor dispute" than it does, it would seem to be governed by this Court's decision in *Virginian Ry.* v. *Federation*, 300 U. S. 515, 563, rejecting a similar argument as to the enforcement of the Railway Labor Act, although that Act contained no express authorization such as is found in Section 16(12) of the Interstate Commerce Act. It follows that Section 16(12), which expressly authorizes suits to enforce Commission orders and which has been reenacted since the passage of the Norris-LaGuardia Act (R. 290), "cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act." 300 U. S. at 563. While the *Virginian* case arose

[2] The question raised by the petitioner as to the adequacy of the injunction bond is of no direct concern to the Interstate Commerce Commission and is, for that reason, not discussed in this brief. The Government does wish to point out, however, that that is hardly a question of general importance requiring the intervention of this Court through a writ of certiorari.

directly out of, and had an immediate and necessary effect on, a dispute between employers and employees, there is, in this case, no labor dispute between the respondent railroads and the Brotherhood, they do not stand in the relationship of employer and employee, and the dispute between the Brotherhood and the River Road was settled amicably in February, 1946. The situation in this case is strikingly like that involved in *Bakery Drivers Union* v. *Wagshal*, 333 U. S. 437, 443, in which this Court said:

> To hold that under such circumstances a failure of two business men to come to terms created a labor dispute merely because what one of them sought might have affected the work of a particular employee of the other, would be to turn almost every controversy between sellers and buyers over price, quantity, quality, delivery, payment, credit, or any other business transaction into a "labor dispute." * * * Furthermore, on the basis of what we have before us, respondent's disagreement * * * was a dead controversy, not involved in the subsequent dispute * * *.

The decision of the Court of Appeals for the Tenth Circuit in *Lee Way Motor Freight, Inc.* v. *Keystone Freight Lines*, 126 F. 2d 931, is not in conflict with that of the court below. In that case, as the court below noted (R. 289), "the plaintiff, the employer, was seeking the aid of the general equity powers of the court to break the strike." Here, the plaintiffs had no dispute with their em-

ployees, and the relief sought was that expressly authori ed by Section 16(12); the general equity powers of the court were not being invoked.

2. As appears from the Statement, *supra,* p. 4, the Brotherhood's first request of the district court was that it dismiss the proceedings for lack of indispensable parties. When that request was denied, the Brotherhood sought leave to intervene on the ground that it was an indispensable party. This Court, in *Railroad Trainmen* v. *B. & O. R. Co.,* 331 U. S. 519, upheld the right of the Brotherhood to intervene, and it would seem that the Brotherhood would now be precluded from reverting to its initial claim, from the denial of which it took no appeal, that the proceedings must be dismissed for failure to join an indispensable party.

Moreover, the Brotherhood's present claim that all of the River Road's employes are indispensable parties appears to be inconsistent with this Court's opinion in the *Railroad Trainmen* case (331 U. S. at 531), in which it was stated that "Whether the employee's interests should be asserted or defended in a proceeding where those interests are at stake is a question to be decided by the employees' representative, not by the court." Certainly, if the employees were indispensable parties, they would have no option as to their participation in the proceeding; but this Court has made it clear that the option was theirs.

As the court below noted (R. 292), Section 16 (12) of the Interstate Commerce Act authorizes

the district court "to enforce obedience to the order of the Commission by injunction 'to restrain such carrier, its officers, agents, or representatives, from disobedience of such order, or to enjoin upon it or them obedience to the same.' " Since "an injunction may issue against and be binding upon the employees of a party without the employees being made parties to the suit [cf. *Walling* v. *Reuter Co.*, 321 U. S. 671, 675], it is clear that the principle (sic) of indispensable party cannot be invoked in this case."

3. The petitioner alleges in this Court (Pet. 27-30), as it did in the court below, that the district court erred in failing to make findings of fact and conclusions of law in denying the motion to vacate the preliminary injunction and for other relief.[3] But the amendment to Rule 52(a) which took effect less than a month after the order of the district court was entered and which may well be applicable, under Rule 86 (b), to this proceeding,[4] provides that, "Findings of fact and con-

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[3] There is some question as to petitioner's right to object to the failure to enter findings and conclusions. The record shows that the trial judge intended to make findings and conclusions in a form submitted to him by the parties, which would supplement those he had formerly made (R. 253, 59-68), and the last action of the trial judge with respect to findings and conclusions was an order for a continuance "for the entry of supplemental findings of fact and conclusions of law" (R. 260). But the parties having agreed on the form of order to be entered (R. 259), the judge proceeded to sign it, no objection being made by the petitioner to the absence of findings and conclusions (R. 260-261).

[4] *Klapprott* v. *United States*, 335 U. S. 601, 608-609.

clusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41 (b)." Since this motion was not under Rule 41 (b), it is clear, under the revised Rules, that findings and conclusions were not necessary on the petitioner's motion to vacate the preliminary injunction and for summary judgment. In any event, the new Rule settles the question for the future, and the proper interpretation of the former Rule (if applicable) certainly does not present an issue of sufficient importance to warrant review by this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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MARCH, 1949.

APPENDIX

Section 16 (12) of the Interstate Commerce Act (49 U.S.C. 16(12)) provides as follows:

> If any carrier fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Interstate Commerce Commission or any party injured thereby, or the United States, by its Attorney General, may apply to any district court of the United States of competent jurisdiction for the enforcement of such order. If, after hearing, such court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, such court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

Rule 52(a) of the Federal Rules of Civil Procedure provides as follows:

> In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Request for findings are not necessary for purposes of

review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41 (b).

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